

SUMMARY OF PROPOSED COMMITTEE DRAFT:

BILL 41 (2021) RELATING TO TRANSIENT ACCOMMODATIONS.

PART I. BRIEF SUMMARY BY SUBJECT MATTER

The **PROPOSED CD1** includes some of the amendments recommended by the DPP in the proposed CD1 transmitted by Departmental Communication 734 (2021), and others proposed by the Zoning and Planning Committee Chair. An overview of the key amendments by subject matter follows.

1. Real Property Tax ("RPT"). Deletes provisions relating to RPT classifications for bed and breakfast homes ("B&Bs") and transient vacation units ("TVUs"). A new bill will be introduced to allow separate consideration of these proposals. Deletes revisions to ROH Section 21-2.150-3 ("Depository of fees and civil penalties relating to bed and breakfast homes or transient vacation units"), which would have required that beginning in the 2022 tax year, up to \$3.125 million in RPT collected annually from properties in the B&B or hotel and resort tax classifications be deposited into the special account.
2. Hotels. Deletes provisions relating to hotels.
3. Hosting Platforms. Deletes the repeal of ROH Chapter 21, Article 2A ("Hosting Platforms").
4. Appeals. Retains amendments to ROH Section 21-1.40 ("Appeals"), which would clarify the applicable date of mailing or service for various notification methods.
5. Administrative Enforcement. Deletes the repeal and replacement of ROH Section 21-2.150-2 ("Administrative enforcement"), and instead amends Section 21-2.150-2 to incorporate provisions relating to persons liable for LUO violations, joint and several liability, methods for the service of enforcement notices, information required in a notice of violation, information required in a notice of order, and an increase in the initial civil fine amount to up to \$5,000. For violations relating to B&Bs or TVUs, provides for maximum fines and increases the initial civil fine amount to up to \$5,000.
6. Master Use Table. In Table 21-3 ("Master Use Table"), retains the elimination of B&Bs as a permitted use (subject to LUO Article 5) in the AG-2, Country, R-20, R-10, R-7.5, R-5, R-3.5, A-3, BMX-3, and BMX-4 Districts. Restores the permitting of B&Bs and TVUs (subject to LUO Article 5) in the Resort District (proposed for deletion in the original bill). Retains but clarifies amendments to footnote 3 of the Master Use Table.

7. Permitted Uses in the Waikiki Special District. In Table 21-9.6(A) ("Waikiki Special District Precinct Permitted Uses and Structures") retains the elimination of B&Bs as a permitted use (subject to LUO Article 5) in the Apartment Precinct. Restores the permitting of B&Bs and TVUs (subject to LUO Article 5) in the Resort Mixed Use Precinct (proposed for deletion in the original bill). Deletes proposed amendments to the hotel entry in the Table.
8. Nonconforming Use Certificates ("NUCs"). Amends ROH Section 21-4.110-1 (NUCs for TVUs) and Section 21-4.110-2 (NUCs for B&Bs) to require B&Bs and TVUs with NUCs to comply with the restrictions and standards in ROH Section 21-5.730(b)(3). Increases the fee for renewal of NUCs for B&Bs and TVUs from \$600 every two years to \$4,000 every two years.
9. Regulation of Bed and Breakfast Homes and Transient Vacation Units. Deletes the repeal and replacement of ROH Section 21-5.730 ("Bed and breakfast homes and transient vacation units"), and instead amends Section 21-5.730 to:
 - a. Delete provisions that permitted B&Bs and TVUs in certain A-1 and A-2 Districts, and instead permits B&Bs and TVUs in designated A-1 and A-2 Districts in the Gold Coast area of the Diamond Head Special District, in close proximity to the Koolina Resort (revised from the proposal in the original bill), and in close proximity to the Turtle Bay Resort. Incorporates corresponding Exhibits as Figures.
 - b. Make the standards and requirements apply to TVUs (as well as B&Bs), except for the home exemption requirement.
 - c. Delete provisions that require an applicant for a B&B or TVU registration or registration renewal to be a natural person who does not own more than one short-term rental in the City, and to submit an affidavit to that effect.
 - d. Add requirements that registration applications include a title report, and registration renewal applications include an updated title report if ownership of the B&B or TVU has changed.
 - e. Clarify the circumstances under which the DPP Director may deny a registration renewal application or revoke a registration.
 - f. Delete requirements that are no longer applicable, including provisions relating to Development Plan area density limits, dedication requirements for B&Bs in the AG-2 District, the 1,000-foot spacing requirement between B&Bs and TVUs, and the requirement that the owner or operator of a B&B remain on the premises during quiet hours.

- g. Provide that private restrictions on B&Bs and TVUs established in multifamily dwelling governing documents will be subject to private enforcement.
 - h. Add provisions relating to minimum insurance requirements, gathering restrictions, and the provision of an informational binder for guests.
 - i. Require advertisements to include the tax map key number of the B&B or TVU (in addition to the registration or NUC number). Any advertisement for the lease or rental of a dwelling unit that does not have a registration or NUC number, but may reasonably be read as being an advertisement for the lease or rental of a bed and breakfast home or transient vacation unit must include a statement that the property may not be rented for less than 90 consecutive days.
 - j. For advertising violations that are not corrected within seven days after receipt of a notice of violation, provide for an initial civil fine not to exceed \$5,000, and a fine not to exceed \$10,000 for each day thereafter that the advertisement is on public display.
10. 90-Day Requirement. Amends the definitions of B&B and TVU to mean dwelling units that are rented for periods of less than 90 days (instead of 180 days), excluding month-to-month holdover tenancies. Adds definitions of "Transient accommodations" and "Transient occupant."
 11. Administrative Rules. Requires the DPP Director to adopt administrative rules to implement the ordinance within 180 days after the effective date of the ordinance.
 12. Effective Date. Provides that the ordinance takes effect 180 days after its approval; provided that SECTION 11 of the ordinance (relating to administrative rules) takes effect upon its approval.

PART II. DETAILED SUMMARY BY BILL SECTION

The **PROPOSED CD1** makes the following amendments, which are listed by bill SECTION:

- A. Deletes SECTION 2 of the bill, relating to the real property tax classifications for bed and breakfast homes ("B&Bs") and transient vacation units ("TVUs"). A new bill will be introduced to allow separate consideration of these proposals.
- B. Adds a new SECTION 2 of the bill to increase the fee for renewal of nonconforming use certificates ("NUCs") for B&Bs and TVUs from \$600 every two years to \$4,000 every two years.
- C. Deletes SECTION 3 of the bill, which would have repealed ROH Chapter 21, Article 2A ("Hosting Platforms"). Renumbers subsequent bill SECTIONS.
- D. Deletes:
 - 1. Former SECTION 5 of the bill, which would have repealed ROH Section 21-2.150-2 ("Administrative enforcement"); and
 - 2. Former SECTION 6 of the bill, which would have added a new ROH Section 21-2.150-2.
- E. Adds a new SECTION 4 of the bill to amend ROH Section 21-2.150-2 ("Administrative enforcement") as follows:
 - 1. Adds a new subsection (b) to specify the persons liable for LUO violations;
 - 2. Adds a new subsection (c) to provide for joint and several liability;
 - 3. Adds a new subsection (d) to specify the methods that may be used to serve enforcement notices issued by the DPP Director;
 - 4. Realphabetizes subsequent subsections;
 - 5. In realphabetized subsection (e), provides that the notice of violation must also include the address or location of the violation, a concise description of the violation, a statement of the actions that are necessary to correct the violation, a requirement that the violator correct the violation by a specified date, a statement of the penalties that will be imposed if the violation is not corrected, and a requirement that the violator notify the DPP Director when the violation has been corrected; and

6. In realphabetized subsection (f), provides that the notice of order must also include a copy of the applicable notice of violation, and increases the initial civil fine amount to up to \$5,000 (instead of up to \$1,000). For violations relating to B&Bs or TVUs, provides for maximum fines and increases the initial civil fine amount to up to \$5,000 (instead of \$1,000).

Renumbers subsequent bill SECTIONS.

- F. Deletes former SECTION 7 of the bill, which would have amended ROH Section 21-2.150-3 to require that beginning in the 2022 tax year, up to \$3.125 million in real property taxes collected annually for the B&B or hotel and resort tax classifications be deposited into the special account for B&Bs and TVUs and used for administration and enforcement purposes. Renumbers subsequent bill SECTIONS.
- G. In renumbered SECTION 5 (former SECTION 8) of the bill:
 1. Amends Table 21-3 ("Master Use Table") to restore B&Bs and TVUs as permitted uses (subject to standards in LUO Article 5) in the Resort District (proposed for deletion in the original bill); and
 2. Amends the footnotes to clarify that B&Bs and TVUs may renew valid registration certificates that were initially issued prior to an amendment to the applicable development plan or sustainable communities plan that prohibits B&Bs or TVUs in any plan area (incorporated from former SECTION 9 of the bill).
- H. In renumbered SECTION 6 (former SECTION 10) of the bill, amends ROH Section 21-4.110-1 ("Nonconforming use certificates for transient vacation units") to revise the section title to read "Transient vacation units—Nonconforming use certificates" (for purposes of conformity), and require TVUs operating under NUCs to comply with the restrictions and standards of ROH Section 21-5.730(b)(3).
- I. In renumbered SECTION 7 (former SECTION 11) of the bill, amends ROH Section 21-4.110-2 ("Bed and breakfast homes – Nonconforming use certificates") to require B&Bs operating under NUCs to comply with the restrictions and standards in ROH Section 21-5.730(b)(3).
- J. Deletes:
 1. Former SECTION 12 of the bill, which would have repealed ROH Section 21-5.360 ("Hotels");
 2. Former SECTION 13 of the bill, which would have added a new ROH Section 21-5.360 ("Hotels and hotel units");

3. Former SECTION 14 of the bill, which would have added a new ROH Section 21-5.360.1 ("Condominium hotels"); and
4. Former SECTION 15 of the bill, which would have added a new ROH Section 21-5.360.2 ("Specialty hotels").

K. Deletes:

1. Former SECTION 16 of the bill, which would have repealed ROH Section 21-5.370 ("Bed and breakfast homes and transient vacation units");
2. Former SECTION 17 of the bill, which would have added a new ROH Section 21-5.730.1 ("Bed and breakfast homes and transient vacation units");
3. Former SECTION 18 of the bill, which would have added a new ROH Section 21-5.730.2 ("Registration, eligibility, application, renewal and revocation");
4. Former SECTION 19 of the bill, which would have added a new ROH Section 21-5.730.3 ("Use and development standards for bed and breakfast homes and transient vacation units");
5. Former SECTION 20 of the bill, which would have added a new ROH Section 21-5.730.4 ("Advertisements, regulation, and prohibitions"); and
6. Former SECTION 21 of the bill, which would have added a new ROH Section 21-5.730.5 ("Violations, complaint, response, and enforcement").

Renumbers subsequent bill SECTIONS.

L. Adds a new SECTION 8 of the bill to amend ROH Section 21-5.730 as follows:

1. In subsection (a), relating to B&Bs and TVUs permitted in certain areas:
 - a. Deletes provisions that allowed B&Bs and TVUs in the A-1 and A-2 Districts if they are within 3,500 feet of a Resort District of greater than 50 contiguous acres, and were rezoned under the same zone change application as part of a master-planned resort community.
 - b. Adds provisions permitting B&Bs and TVUs in a designated A-2 District in the Gold Coast area of the Diamond Head Special District; designated A-1 and A-2 Districts in close proximity to the Koolina Resort; and a designated A-1 District in close proximity to the Turtle Bay Resort.

- c. Adds corresponding Figures 21-5.1, 21-5.2, and 21-5.3 (former Exhibits A, B, and C, but does not include former Exhibit D because B&Bs and TVUs are already permitted in the Makaha Resort District). In Figure 21-5.2, does not permit B&Bs and TVUs in: A-1 Districts mauka of Farrington Highway, and the A-1 and A-2 Districts on the right side of the figure.
2. In subsection (b), relating to the standards and requirements for B&Bs and TVUs:
- a. Throughout subsection (b), adds that the standards and requirements applicable to B&Bs also apply to TVUs, except that the home exemption requirement only applies to B&Bs.
 - b. Deletes the exceptions for B&Bs and TVUs in the Resort District, certain A-1 and A-2 Districts, and the Resort Mixed Use Precinct of the Waikiki Special District. Provides that the only part of subsection 21-5.730(b) that B&Bs and TVUs operating under NUCs need to comply with is subsection (b)(3).
 - c. Deletes provisions that require an applicant for a B&B or TVU registration or registration renewal to be a natural person who does not own more than one short-term rental in the City, and to submit an affidavit to that effect.
 - d. Adds a requirement that registration applications include a title report issued within 30 days prior to submission.
 - e. Deletes registration and registration renewal requirements for B&Bs located in the AG-2 District (no longer applicable).
 - f. Adds a requirement that registration applications include a copy of the required informational binder.
 - g. Adds provisions specifying that registration will be effective for a period of one year and must be renewed annually prior to expiration.
 - h. Adds a requirement that registration renewal applications be submitted no earlier than three months prior to the expiration date.
 - i. Clarifies that registration renewal applications must include tax clearance certificates certifying payment of real property taxes, general excise taxes ("GET"), and transient accommodations taxes ("TAT").

- j. Adds a requirement that registration renewal applications include an updated title report if there has been any change in ownership of the subject property.
 - k. Clarifies the circumstances pursuant to which the DPP Director may deny a renewal application.
 - l. Deletes the requirement that the owner or operator of a B&B that is being rented remain on the premises during quiet hours.
 - m. Amends the occupancy provisions to require registration of all transient occupants, limit sleeping accommodations to no more than two adults in each bedroom, and restrict the total number of transient occupants to two times the number of bedrooms provided.
 - n. Deletes various provisions that are no longer applicable relating to Development Plan area density limits, dedication requirements for B&Bs in the AG-2 District, and the 1,000-foot spacing requirement between B&Bs and TVUs.
 - o. Amends the multifamily dwelling density limit (50 percent of the total dwelling units in a multifamily dwelling) to provide that private restrictions on B&Bs and TVUs established in multifamily dwelling governing documents will be privately enforced.
 - p. Adds a requirement for a minimum of \$1 million in commercial general liability insurance coverage for the B&B or TVU.
 - q. Adds provisions restricting gatherings of 10 or more individuals who are not registered as overnight transient occupants at the B&B or TVU.
 - r. Adds a requirement that an informational binder be provided to transient occupants. The binder must include a floor plan, parking plan, trash collection and disposal instructions, house rules (including quiet hours between 10 p.m. and 7 a.m.), emergency contacts, copies of the registration certificate and certificate of insurance, and copies of the GET and TAT licenses.
 - s. Clarifies the circumstances under which the DPP Director may revoke a registration certificate.
3. In subsection (c), relating to advertising requirements:
- a. Clarifies the definitions of "Advertisement" and "Person."

- b. Requires advertisements to include the tax map key number of the B&B or TVU (in addition to the registration or NUC number). Any advertisement for the lease or rental of a dwelling unit that does not have a registration or NUC number, but may reasonably be read as being an advertisement for the lease or rental of a bed and breakfast home or transient vacation unit must include a statement that the property may not be rented for less than 90 consecutive days.
 - c. For advertising violations that are not corrected within seven days after receipt of a notice of violation, provides for an initial civil fine not to exceed \$5,000, and a fine not to exceed \$10,000 for each day thereafter that the advertisement is on public display (instead of a civil fine of not less than \$1,000 and not more than \$10,000 for each day the advertisement is on public display beyond the seven-day correction period).
 - d. Deletes the exemption for legally established dwelling units that are rented for 30 consecutive days or more, since dwelling units that are rented for periods that exceed the short-term rental period are by definition not short-term rentals.
 - e. Adds a provision stating that publishing companies and internet service providers will not be held responsible for the content of advertisements created by third parties.
- 4. In subsection (d), relating to unpermitted B&Bs and TVUs:
 - a. In the definitions of unpermitted B&Bs and TVUs, deletes provisions excluding B&Bs and TVUs in the Resort District, certain A-1 and A-2 Districts, and the Resort Mixed Use Precinct of the Waikiki Special District. Adds an exclusion for validly registered B&Bs and TVUs.
 - b. Provides that it is unlawful to rent an unpermitted B&B or TVU for fewer than 90 consecutive days (instead of 30 consecutive days).
- 5. In subsection (e), relating to written complaints, adds that the complaint must include the complainant's name and mailing address, and the apartment or unit number of the suspect B&B or TVU if it is located in a multifamily dwelling.

6. Adds a new subsection (f) to provide that the provisions of the section do not terminate or supersede private restrictive covenants.

Renumbers subsequent bill SECTIONS.

- M. In renumbered SECTION 9 (former SECTION 22) of the bill, revises Table 21-9.6(A) ("Waikiki Special District Precinct Permitted Uses and Structures") to:
 1. Restore B&Bs and TVUs (subject to the standards in LUO Article 5) as permitted uses in the Resort Mixed Use Precinct (proposed for deletion in the original bill);
 2. Delete proposed amendments to the hotel entry; and
 3. Retain the elimination of B&Bs as a permitted use in the Apartment Precinct.
- N. Deletes former SECTION 23 of the bill, which would have deleted the definitions of "Booking service" and "Hosting platform." Renumbers subsequent bill SECTIONS.
- O. In renumbered SECTION 10 of the bill (former SECTION 24):
 1. Amends the definitions of "Bed and breakfast home" and "Transient vacation unit" to mean dwelling units that are rented for periods of less than 90 days (instead of 180 days), and exclude month-to-month holdover tenancies;
 2. Deletes proposed amendments to the definition of hotel; and
 3. Adds new definitions for:

"Transient accommodations," meaning accommodations for stays of less than 90 days; and

"Transient occupant," meaning any person who rents a lodging or dwelling unit (or portion thereof) for less than 90 consecutive days, and whose permanent address for legal purposes is not the lodging or dwelling unit being rented.
- P. Deletes former SECTION 25 of the bill, which would have added new definitions of "Condominium hotel" and "Hotel unit."
- Q. Adds a new SECTION 11 of the bill to require the DPP Director to adopt administrative rules to implement the ordinance within 180 days after the effective date of the ordinance. Renumbers subsequent bill SECTIONS.

- R. In renumbered SECTION 14 (former SECTION 28) of the bill, provides that the ordinance takes effect 180 days after its approval; provided that SECTION 11 of the ordinance (relating to administrative rules) takes effect upon its approval.
- S. Makes miscellaneous technical and nonsubstantive amendments.



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RELATING TO TRANSIENT ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. Short-term rentals are disruptive to the character and fabric of our residential neighborhoods; they are inconsistent with the land uses that are intended for our residential zoned areas and increase the price of housing for Oahu's resident population by removing housing stock from the for-sale and long-term rental markets. The City Council finds that any economic benefits of opening-up our residential areas to tourism are far outweighed by the negative impacts to our neighborhoods and local residents.

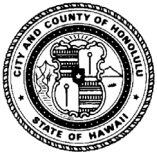
In 2019, the City passed Ordinance 19-18, allowing a limited number of new bed and breakfast homes and requiring certain short-term rentals to comply with registration requirements, development standards, and other regulations.

The purpose of this ordinance is to better protect the City's residential neighborhoods and housing stock from the negative impacts of short-term rentals by providing a more comprehensive approach to the regulation of transient accommodations within the City.

SECTION 2. Section 6-41.1, Revised Ordinances of Honolulu 1990 ("Fee schedule"), is amended by amending subsection (a) to read as follows:

"(a) The fees set forth in the following schedule for applications under Chapter 21 and for variances therefrom must be paid upon application:

Type of Application		Fee
(1)	Zone change	\$700.00, plus \$300.00 per acre or major fraction, up to a maximum of \$15,000.00
(2)	Cluster housing	\$1,200.00, plus \$300.00 per acre or major fraction, up to a maximum of \$15,000.00



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(3) Conditional use permit (major), and conditional use permit (minor) for a meeting facility, day-care facility, or school (elementary, intermediate, or high)	\$1,200.00, plus \$300.00 per acre or major fraction, up to a maximum of \$15,000.00
(4) Major project in special districts and downtown building heights in excess of 350 feet	\$1,200.00, plus \$300.00 per acre or major fraction, up to a maximum of \$15,000.00
(5) Plan review use	\$1,200.00, plus \$300.00 per acre or major fraction, up to a maximum of \$15,000.00
(6) Planned development-housing	\$1,200.00, plus \$300.00 per acre or major fraction, up to a maximum of \$15,000.00
(7) Special districts: establishment of, or amendment to	\$1,200.00, plus \$300.00 per acre or major fraction, up to a maximum of \$15,000.00
(8) Conditional use permit (minor), other than for a meeting facility, day-care facility, or school (elementary, intermediate or high)	\$600.00
(9) Existing use	\$600.00, plus \$150.00 per acre or major fraction, up to a maximum of \$15,000.00
(10) Exempt project in special districts	No permit fee required
(11) Minor project in special districts	
(A) Tree removal	\$100.00 per tree
(B) Other than tree removal	\$600.00
(12) Waiver	\$600.00
(13) Zoning adjustment	
(A) Sign master plan	\$1,200.00



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	(B) Other than for sign master plan	\$600.00
(14)	Signs estimated value of work	
	(A) \$.01 to \$500.00	\$18.00
	(B) \$500.01 to \$1,000.00	\$35.00
	(C) \$1,000.01 and above	\$70.00
(15)	Zoning variance	\$2,400.00
(16)	Nonconforming use certificate renewal	[\$600.00] <u>\$4,000</u> (2 years)
(17)	Minor modifications	
	(A) To approved cluster housing permit; conditional use permit (major); conditional use permit (minor) for a meeting facility, day-care facility, or school (elementary, intermediate, or high); plan review use; planned development-housing permit, planned development-apartment, and planned development-resort; major projects in special districts, and downtown building heights in excess of 350 feet; and zoning adjustment for a sign master plan	\$600.00



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(B)	To conditional use permit (minor) other than for a meeting facility, day-care facility, or school (elementary, intermediate, or high); existing use; exclusive agriculture site approval; minor projects in special districts other than tree removal; agricultural site development plan; waiver; and zoning adjustment for other than for a sign master plan	\$300.00
(C)	To temporary use approval	\$50.00
(18)	Agricultural site development plan	\$600.00
(19)	Planned Development-Apartment and Planned Development-Resort	\$15,000.00
(20)	Written zoning clearance or confirmation, and flood hazard district interpretation	\$150.00 per request or for each tax map key when multiple parcels are involved; or \$300.00 per tax map key for requests involving confirmation of nonconforming status
(21)	Temporary use approval	
	(A) For a sales office	\$100.00
	(B) For other than a sales office	\$200.00
(22)	Exclusive agriculture site approval	\$600.00
(23)	Flood variance	\$600.00
(24)	Zoning district boundary adjustment	\$500.00
(25)	Appeals to zoning board of appeals	\$400.00



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- (26) Environmental document processing, when the department of planning and permitting is the accepting agency
 - (A) Environmental assessment \$600.00
 - (B) Environmental impact statement \$1,200.00
- (27) Reconsideration \$2,400.00
- (28) Declaratory Ruling \$2,400.00
- (29) Short-term rental advertisement registration \$50.00"

SECTION 3. Section 21-1.40, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-1.40 Appeals.

Appeals from the actions of the director in the administration of the provisions of the LUO shall be to the zoning board of appeals as provided by Section 6-1516 of the charter. Appeals ~~[shall]~~ must be filed within 30 days ~~[of]~~ after the mailing or service of the director's decision. For the purposes of this section:

- (a) For actions of the director that are not required to be served by registered or certified mail, the date of mailing or service is the date on which the director's action is placed into the United States Postal Service mail.
- (b) For actions of the director that are served by registered or certified mail, the date of mailing or service is the date on which the registered or certified mail is received, as indicated by the return receipt for the mailing or other records of the United States Postal Service.
- (c) For actions of the director that are served by physical delivery to a person or a person's residence, place of employment, or usual place of business, the date of service is the date of delivery, as established by an acknowledgment of service signed by the person taking delivery of the director's action or a sworn declaration made by the person responsible for effecting the service of the director's action by physical delivery.



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- (d) For actions of the director that are served by physical posting of a copy of the action on the property where the violation has occurred, the date of the service is the date of posting, as established by a sworn declaration made by the person responsible for effecting the service of the director's action by physical posting.
- (e) For actions of the director that are served by publication, the date of service is the date on which the last required publication is made.
- (f) For actions of the director that are delivered by facsimile, email, or other means of electronic transmission, the date of service is the date on which the action is transmitted to the correct email address, facsimile number, or other electronic address for the person served, as established by a facsimile receipt, email receipt, email response that acknowledges receipt of the email, or other reasonable proof of the successful transmission of electronic delivery to the addressee.
- (g) For persons who submit a written request to receive notice of a director's action concerning a particular project, property, or applicant prior to the director's action being issued, the date of service will be determined in accordance with subsections (a) through (f).
- (h) For persons who submit a written request to receive notice of a director's action concerning a particular project, property, or applicant after the director's action has been issued, the date of service is the earlier of date on which the director's action was served in accordance with subsections (a) through (f), or the date on which the director's action was served on the person requesting notice of the director's action in accordance with subsections (a) through (f)."

SECTION 4. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-2.150-2 Administrative enforcement.

- (a) Enforcement authority. In lieu of or in addition to seeking criminal enforcement pursuant to Section 21-2.150-1, [if the director determines that any person is violating any provision] the director may seek enforcement against violations of this chapter, [any rule] rules adopted [thereunder or any permit issued pursuant thereto, the director may have the person served, by registered or certified mail, restricted delivery, return receipt requested, or by hand delivery with] by the director to administer this chapter, and the conditions of any permits or approvals granted under this chapter by issuing a written notice of violation and notice of



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order pursuant to this section. ~~[However, if the whereabouts of such person is unknown and cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publication once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.]~~

(b) Persons responsible for violations. The following persons are liable for any violations identified in subsection (a) occurring on real property and are responsible for complying with enforcement notices issued by the director regarding the real property, building, or premises:

- (1) The owners of real property, buildings, and premises on which a violation occurs;
- (2) Persons that have possession or control of the real property, building, or premises on which a violation occurs; and
- (3) Persons that cause, contribute to, or benefit from a violation, in whole or in part.

For the purposes of this section, "persons" means natural persons or legal persons, including but not limited to trusts, corporations, partnerships, and limited liability companies.

(c) Joint and several liability. If the director determines that more than one person is liable for a violation, the director may issue one enforcement notice to all responsible persons or separate enforcement notices to persons or groups of persons that are responsible for the violation. Persons that are issued an enforcement notice pursuant to this section are jointly and severally liable for the violations described in the enforcement notice, and each person will be independently liable for the full extent of the violation and responsible for complying with the enforcement notice.

(d) Service of enforcement notices issued by the director.

- (1) The director may serve an enforcement notice issued pursuant to this section by registered or certified mail, with return receipt requested, addressed to the last known address of each violator identified in the enforcement action, or by delivering a copy of the enforcement notice to the violator in person.



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- (2) The director also may serve an enforcement notice issued pursuant to this section by leaving a copy of the enforcement notice at the violator's residence, place of employment, or usual place of business, or by physically posting a copy of the enforcement notice in a prominent location on the property in a conspicuous manner that is likely to be discovered; provided that due diligence was used in attempting to serve the person personally or by registered or certified mail.
- (3) If the director is not able to serve the enforcement notice by any of the methods described in subdivisions (1) and (2), the director may serve the enforcement notice on one or more violators by publishing a copy of the order once each week for two consecutive weeks in a daily or weekly publication that is in general circulation within the City.

Where one or more violators identified in an enforcement notice have the same mailing address, place of residence, place of employment, or usual place of business, the delivery of one copy of the enforcement notice to that place shall be effective service upon all violators named in the enforcement notice that may be served at the place the enforcement notice has been delivered.

~~[(b)]~~(e) Contents of the ~~[Notice of Violation.]~~ notice of violation. ~~[The]~~ In addition to any other information or requirements deemed appropriate by the director, the notice of violation must include [at least] the following information:

- (1) Date of the notice of violation;
- (2) The name ~~[and address]~~ of the person noticed;
- (3) The address or location of the violation;
- ~~[(3)]~~(4) The ~~[section number of the provision or rule, or the number of the permit]~~ specific ordinance, rule, or condition that has been violated;
- ~~[(4)]~~(5) ~~[The nature]~~ A concise description of the violation; ~~[and~~
- ~~(5) — The location and time of the violation.]~~
- (6) A statement of the actions that are necessary to correct the violation;
- (7) A requirement that the violator correct the violation by a specified date;



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(8) A statement of the penalties that will be imposed if the violation is not corrected by the deadline for correction established pursuant to subdivision (7); and

(9) A requirement that the violator send a written notice to the director reporting the correction of the violation when the violator believes the violation has been corrected.

~~[(e)]~~(f) Contents of ~~[Order.]~~ the notice of order. If the violation is not corrected by the date specified in the notice of violation, the director may issue a notice of order imposing penalties for failure to correct a violation.

(1) In addition to any other information or requirements deemed appropriate by the director, the notice of order must include a copy of the applicable notice of violation issued by the director for the violation.

~~[(4)]~~(2) The notice of order may require the person to do any or all of the following:

- (A) Cease and desist from the violation;
- (B) Correct the violation at the person's own expense before a date specified in the order;
- (C) Pay a civil fine not to exceed ~~[\$1,000]~~ \$5,000 in the manner, at the place, and before the date specified in the order; and
- (D) Pay a civil fine not to exceed \$5,000 per day for each day in which the violation persists beyond the date specified in paragraph (C), in the manner and at the time and place specified in the order.

~~[(2)]~~(3) Notwithstanding the civil fines specified in subdivision ~~[(1)(C) and (D);]~~ (2)(C) and (D), if the violation is a violation of any provision of this chapter relating to the requirements for transient vacation units or bed and breakfast homes, then, in addition to the requirements in subdivision ~~[(1)(A) and (B);]~~ (2)(A) and (B), the order may require a person to do any or all of the following:

- (A) For the initial violation:



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- (i) Pay a civil fine [of \$1,000,] not to exceed \$5,000 in the manner, at the place, and before the date specified in the order; and
- (ii) Pay a civil fine [of] not to exceed \$5,000 per day for each day in which the violation persists beyond the date specified in subparagraph (i), in the manner and at the time and place specified in the order.

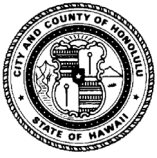
(B) For a recurring violation:

- (i) Pay a civil fine [of] not to exceed \$10,000 in the manner, at the place, and before the date specified in the order; and
- (ii) Pay a civil fine [of] not to exceed \$10,000 for each day in which the violation persists beyond the date specified in subparagraph (i), in the manner and at the time and place specified in the order.

~~[(3)]~~(4) The order must advise the person that the order will become final 30 days after the date of its mailing or delivery. The order must also advise that the director's action may be appealed to the zoning board of appeals.

~~[(e)]~~(g) Effect of ~~[Order—Right to Appeal.]~~ the notice of order—right to appeal. The provisions of the notice of order issued by the director under this section will become final 30 days after the date of the mailing or delivery of the order. The person may appeal the notice of order to the zoning board of appeals as provided in Charter Section 6-1516~~[. However,]~~ and Section 21-1.40; provided that an appeal to the zoning board of appeals will not stay any provision of the notice of order.

~~[(e)]~~(h) Judicial ~~[Enforcement of Order.]~~ enforcement of the notice of order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.



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~~[(f)]~~(i) Notwithstanding any other provision to the contrary, in addition to daily civil fines, the director may impose a fine in an amount equal to the total sum received by the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit from any impermissible rental activity during the period in which the owner, operator, or proprietor was subject to daily fines.

~~[(g)]~~(j) Nothing in this section shall preclude the director from seeking any other remedy available by law."



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SECTION 5. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by:

- A. Amending the "Dwellings and Lodgings" category to revise the "bed and breakfast homes" and "transient vacation units" entries to read as follows:

"TABLE 21-3 MASTER USE TABLE"

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

KEY: Ac = Special accessory use subject to standards in Article 5
Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
P = Permitted use
P/c = Permitted use subject to standards in Article 5
PRU = Plan Review Use

ZONING DISTRICTS																					
USES (Note: Certain uses are defined in Article 10.)																					
	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
DWELLINGS AND LODGINGS																					
Bed and breakfast homes			[P/e ³]	[P/e ³]	[P/e ³]	[P/e ³]	P/c ³	P/c ³	[P/e ³]	[P/e ³]	[P/e ³]	[P/e ³]	P/c ³			[P/e ³]	[P/e ³]				
Transient vacation units							P/c	P/c ³					P/c ³								



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B. Amending the footnotes to read as follows:

"Notes:

Where a proposed use is not specifically listed above, the director shall review the proposed use and, based on its characteristics and its similarity to the uses listed above, shall determine the regulatory requirements for that use.

¹ Commercial use subject to special density controls (see Table 21-3.3 and Section 21-3.90-1(c)(4)).

² Commercial use subject to special density controls (see Table 21-3.5 and Section 21-3.140-1(c))

³ Notwithstanding any contrary provisions in this chapter, bed and breakfast homes and transient vacation units ~~[are prohibited and may not operate without a]~~ that do not have a valid nonconforming use certificate or registration certificate are not permitted in areas where the applicable development plan or sustainable communities plan prohibits ~~[or does not permit] the establishment of~~ new bed and breakfast homes or transient vacation units~~[-]; provided that bed and breakfast homes or transient vacation units may renew valid registration certificates that were initially issued prior to an amendment to the applicable development plan or sustainable communities plan that prohibits bed and breakfast homes or transient vacation units in the plan area.~~

SECTION 6. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 21-4.110-1 ~~[Nonconforming use certificates for transient vacation units.]~~
Transient vacation units—Nonconforming use certificates.**

- (a) The purpose of this section is to permit certain transient vacation units that have been in operation since prior to October 22, 1986, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.
- (b) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:
 - (1) between September 1, 2000 and October 15, 2000; then
 - (2) between September 1 and October 15 of every even-numbered year thereafter.



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Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

- (c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.
- (d) The following additional provisions [~~of Section 21-5.730(c) shall~~] apply to [~~advertisements for~~] transient vacation units operating under a nonconforming use certificate pursuant to this section[-]:
 - (1) Section 21-5.730(b)(3) relating to restrictions and standards; and
 - (2) Section 21-5.730(c) relating to advertisements."

SECTION 7. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-2 Bed and breakfast homes—Nonconforming use certificates.

- (a) The purpose of this section is to permit certain bed and breakfast homes that have been in operation since prior to December 28, 1989, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.



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- (b) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

- (1) between September 1, 2000 and October 15, 2000; then
- (2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

- (c) Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.

~~[(d) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:~~

- ~~(1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.~~
- ~~(2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.~~
- ~~(3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.~~



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~~(4) One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.~~

~~(5) The provisions of Section 21-5.730(c) shall apply to advertisements for the bed and breakfast home.]~~

~~[(e)]~~(d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.

(e) The following additional provisions apply to bed and breakfast homes operating under a nonconforming use certificate pursuant to this section:

(1) Section 21-5.730(b)(3) relating to restrictions and standards; and

(2) Section 21-5.730(c) relating to advertisements."

SECTION 8. Section 21-5.730, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.730 Bed and breakfast homes and transient vacation units.

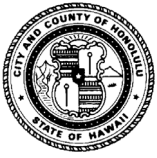
(a) Bed and breakfast homes and transient vacation units are permitted in the ~~[A-1 low-density apartment zoning district and A-2 medium-density apartment zoning district provided:~~

~~(1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and~~

~~(2) The resort district and the A-1 or A-2 district, as applicable, were rezoned pursuant to the same zone change application as part of a master-planned resort community.] following areas:~~

(1) The area located within the A-2 medium-density apartment zoning district situated in the Gold Coast area of the Diamond Head Special District, as designated in Figure 21-5.1;

(2) The areas located within the A-1 low-density apartment zoning district and the A-2 medium-density apartment zoning district situated in close proximity to the Koolina Resort, as designated in Figure 21-5.2; and



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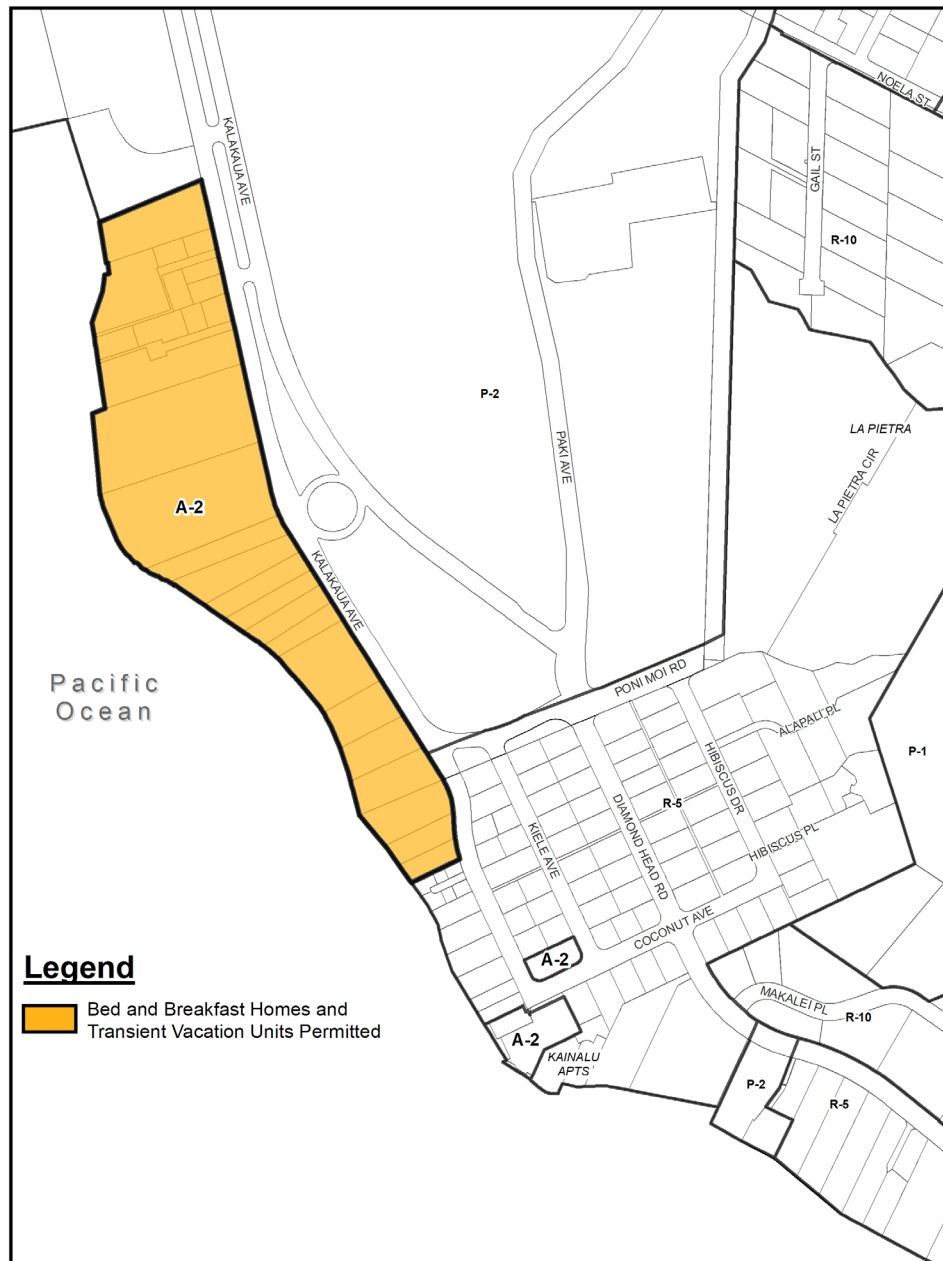
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- (3) The area located within the A-1 low-density apartment zoning district situated in close proximity to the Turtle Bay Resort, as designated in Figure 21-5.3.



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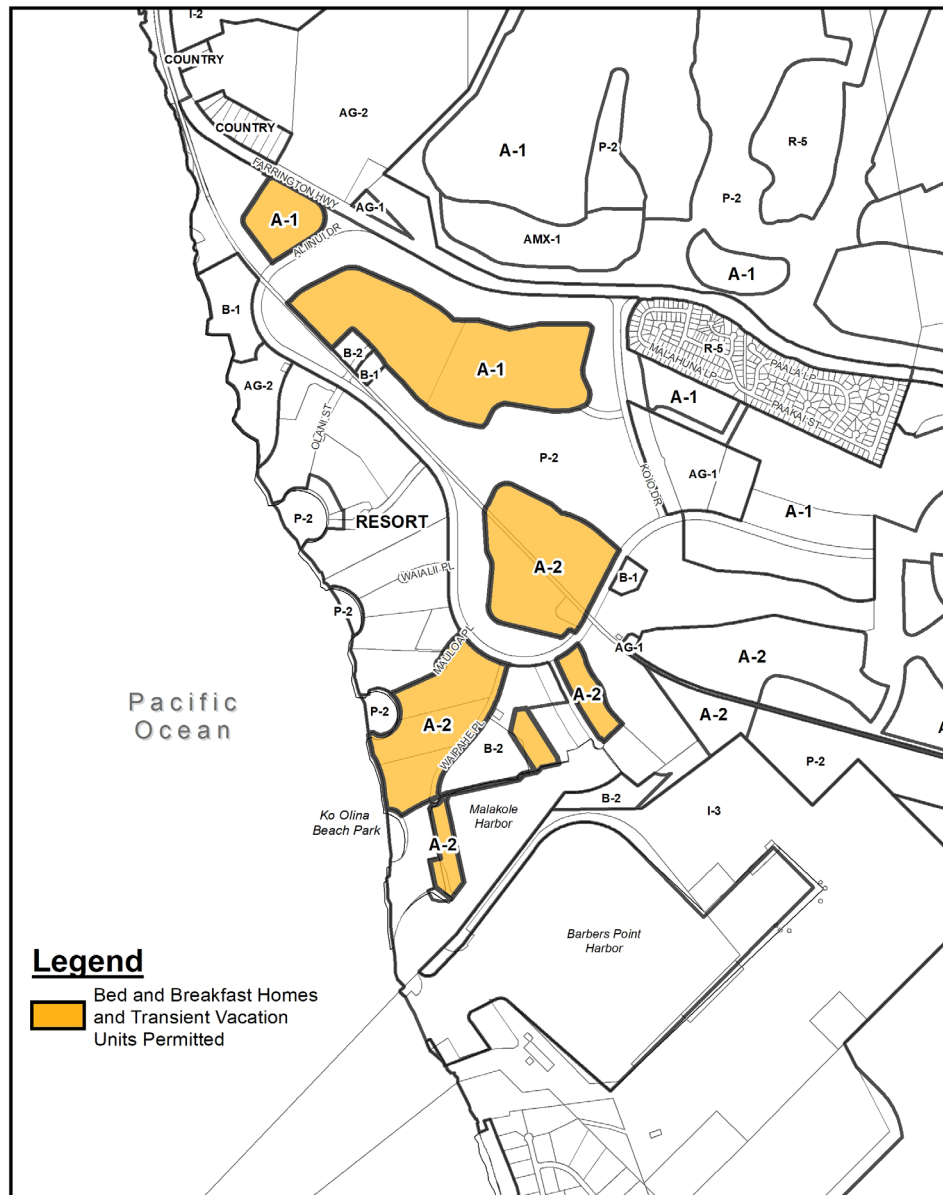
Figure 21-5.1
Bed and Breakfast Homes and Transient Vacation Units
Permitted Areas – Gold Coast of the Diamond Head Special District





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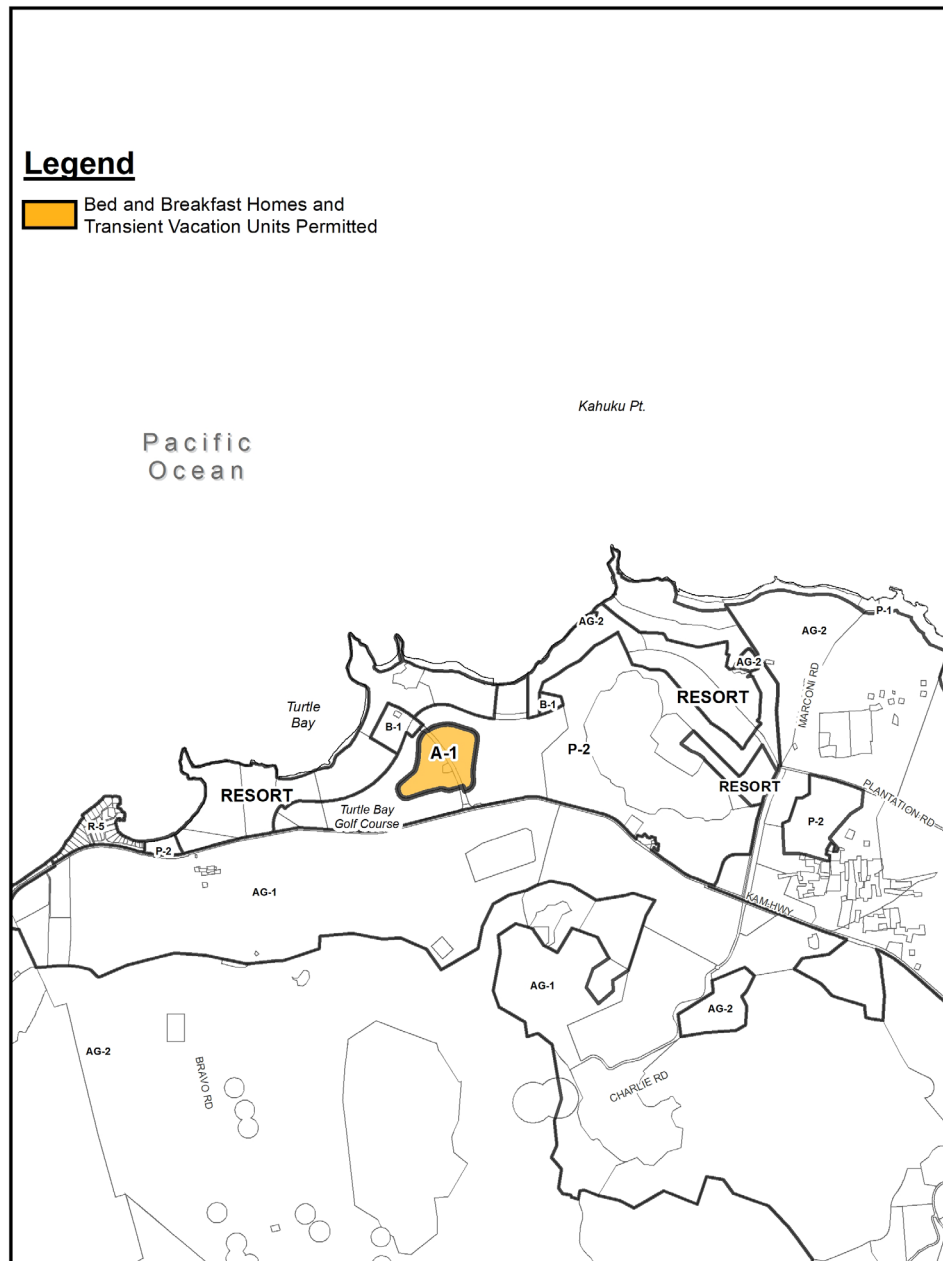
Figure 21-5.2
Bed and Breakfast Homes and Transient Vacation Units
Permitted Areas – Close Proximity to the Koolina Resort





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Figure 21-5.3
Bed and Breakfast Homes and Transient Vacation Units
Permitted Areas – Close Proximity to the Turtle Bay Resort





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- (b) ~~[In all zoning districts where bed and breakfast homes are permitted, except for the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low density apartment district and A-2 medium density apartment district pursuant to subsection (a), and except as otherwise provided in subdivision (6), the]~~ The following standards and requirements apply to bed and breakfast homes and transient vacation units; provided that bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2, or transient vacation units operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1 need only comply with subdivision (3):
- (1) Registration requirements. The owner or operator of a bed and breakfast home~~[, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property,]~~ or transient vacation unit shall register the bed and breakfast home or transient vacation unit with the department on a form prescribed by the department, and ~~[shall]~~ submit the following in the initial application for registration:
- ~~[(A)]~~ Affirmation that the applicant of the bed and breakfast home is a natural person;
- ~~[(B)]~~ Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;]
- ~~[(A)]~~ A title report for the subject property that has been issued or updated within 30 days prior to its submission, and identifies all persons owning an interest in the property;
- ~~[(C)]~~~~[(B)]~~ A valid current State of Hawaii general excise tax license and transient accommodations tax license for the subject property;
- ~~[(D)]~~~~[(C)]~~ ~~[Evidence]~~ For a bed and breakfast home, evidence of a real property tax home exemption for the subject property, and evidence that the applicant has a minimum 50 percent ownership interest in the subject property;
- ~~[(E)]~~~~[(D)]~~ An initial registration fee of \$1,000 for the bed and breakfast home~~;~~ or transient vacation unit;



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~~[(F)]~~(E) Evidence that the use as a bed and breakfast home or transient vacation unit is covered by an insurance carrier for the subject property~~[:]~~ pursuant to subdivision (3)(F);

~~[(G)]~~(F) Confirmation that the bed and breakfast home or transient vacation unit is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules;

~~[(H)]~~—An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city;

~~[(I)]~~—A floor plan showing the location of guest rooms for a bed and breakfast home;

~~[(J)]~~—For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, is currently dedicated for a specific agricultural use pursuant to Section 8-7.3; and]

(G) The informational binder required under subdivision (3)(H); provided that a copy of a registration certificate need not be included;

~~[(K)]~~(H) Evidence that a dwelling unit proposed for use as a bed and breakfast home~~[:]~~ or transient vacation unit:

- (i) Is not an affordable unit subject to income restrictions;
- (ii) Did not receive housing or rental assistance subsidies; and
- (iii) Was not subject to an eviction within the last 12 months.

Registration will be effective for a period of one year beginning on the date a certificate of registration is issued by the department, and must be renewed annually prior to expiration.

- (2) Registration renewal requirements. Annually, [by August 30,] no earlier than three months prior to the expiration of the registration certificate, the



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owner or operator of a bed and breakfast home~~[-, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property,]~~ or transient vacation unit shall renew the registration certificate for a bed and breakfast home or transient vacation unit with the department on a form prescribed by the department, and submit to the department[:] the following in the registration renewal application:

~~[(A) — Affirmation that the applicant for the bed and breakfast home is a natural person;~~

~~(B) — Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;]~~

~~(C) — Evidence of having paid State of Hawaii general excise taxes and transient accommodations taxes for the subject property;]~~

~~(D) Evidence]~~ (A) For a bed and breakfast home, evidence of a real property tax home exemption for the subject property;

(B) A tax clearance certificate issued by the department of budget and fiscal services certifying that real property taxes were assessed at the rates required by Section 8-7.1 and paid in full during the preceding tax year;

(C) A tax clearance certificate issued by the State Department of Taxation certifying the payment of general excise taxes and transient accommodations taxes for the subject property during the previous tax year;

(D) If there has been any change in ownership of the subject property, an updated title report that has been issued within 30 days prior to the submission of the renewal application to the department;

(E) A renewal fee of \$2,000 for the bed and breakfast home[:] or transient vacation unit;

(F) Evidence that the use as a bed and breakfast home or transient vacation unit is covered by an insurance carrier for the property[:] pursuant to subdivision (3)(F); and



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(G) Confirmation that the bed and breakfast home or transient vacation unit is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules[;].

~~[(H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city; and~~

~~[(I) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, is currently dedicated for a specific agricultural use pursuant to Section 8-7.3.~~

~~[The renewal of a registration for a bed and breakfast home will be granted upon receipt of an application meeting all requirements set forth in this section; provided that if] The director may deny renewal of a registration if: (i) the owner or operator receives one or more notices of order for violation of subsection (b) within a one year period; (ii) the owner or operator demonstrates an inability to operate a bed and breakfast home or transient vacation unit without causing significant negative impacts to the surrounding community, including but not limited to instances where complaints from the public indicate that noise or other nuisances created by guests disturbs residents of the neighborhood in which the bed and breakfast home or transient vacation unit is located, or (iii) where other good cause exists[, the director may deny] for denial of the renewal application.~~

(3) Restrictions and Standards. Bed and breakfast homes and transient vacation units must operate in accordance with the following restrictions and standards:

~~[(A) Dwelling units in detached dwellings used as bed and breakfast homes must be occupied by a family, and renters of any room in the detached dwelling other than the bed and breakfast home guests are not permitted;~~

~~[(B) No more than two guest rooms in a bed and breakfast home may be rented to guests, and a maximum of four guests are permitted within the bed and breakfast home at any one time;~~



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~~(C)~~(A) Functioning smoke and carbon monoxide detectors must be installed in each transient occupant bedroom and each hallway connected to a transient occupant bedroom;

~~[(D)]~~ House rules, including quiet hours between 10:00 p.m. and 8:00 a.m., and emergency contact information for the owner or operator must be provided to all guests and posted in conspicuous locations;

~~(E)~~ When any guest room in a bed and breakfast home is being rented to guests, the owner or operator shall remain on the premises during quiet hours;

~~[(F)]~~(B) Occupancy limits and sleeping arrangements are as follows:

- (i) All overnight transient occupants must be registered with the owner or operator of the bed and breakfast home or transient vacation unit;
- (ii) Sleeping accommodations for all transient occupants must be provided in bedrooms, with a maximum of two adults sleeping in each bedroom;
- (iii) The total number of adult overnight transient occupants may not exceed two times the number of bedrooms provided to transient occupants for sleeping accommodations; and
- (iv) The owner or operator shall maintain a current two-year registry setting forth the names and telephone numbers of all ~~guests~~ transient occupants and the dates of their respective stays;

~~[(G)]~~(C) ~~[No exterior]~~ Exterior signage indicating that ~~[shows the]~~ a dwelling unit is used as a bed and breakfast home or transient vacation unit is ~~[allowed;]~~ prohibited;

~~[(H)]~~ Registration as a bed and breakfast home or transient vacation unit is not transferable, and shall not run with the land;

~~(I)~~ Development Plan Area Density Limit. Excluding bed and breakfast homes and transient vacation units in the resort district,



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~~resort mixed use precinct of the Waikiki special district, and the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to subsection (a), where there is no limit on the number of bed and breakfast homes and transient vacation units allowed, the number of bed and breakfast homes and transient vacation units permitted in each development plan area is limited to no more than one half of one percent of the total number of dwelling units in that development plan area. The total number of dwelling units in a development plan area will be based on the latest figures from the U.S. Census data. Where the initial number of bed and breakfast home applications for a development plan area exceeds the one half of one percent limitation, acceptance of applications will be selected on a lottery basis. When renewal applications fall below the one half of one percent limitation, new applications will be accepted on a lottery basis. The director shall adopt rules pursuant to HRS Chapter 91 to implement and administer the lottery;~~

~~[(J)]~~(D) Multifamily Dwelling Density Limit. ~~[Excluding multifamily dwellings in the resort district, resort mixed use precinct of the Waikiki special district, and the A-1 low-density apartment district and A-2 medium-density apartment district pursuant to subsection (a), unless]~~ Unless otherwise specified in apartment bylaws, covenants, or correspondence from a homeowners association, apartment owners association, or condominium property regime, the total number of bed and breakfast homes and transient vacation units must not exceed 50 percent of the total dwelling units in a multifamily dwelling[;]. Private restrictions on bed and breakfast homes and transient vacation units for a multifamily dwelling established in the governing documents will be subject to private enforcement against offending unit owners by appropriate legal action brought by the association for the multifamily dwelling or individual unit owners;

~~[(K)]~~ If a bed and breakfast home is located in the AG-2 general agricultural district, the portion of the subject property that is not being used as a farm dwelling pursuant to Section 21-5.250, must be currently dedicated for a specific agricultural use pursuant to Section 8-7.3;



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~~(L) — A bed and breakfast home must not be located within a 1,000-foot radius of another bed and breakfast home or a transient vacation unit; provided that this spacing requirement:~~

~~(i) — Does not apply as between (1) bed and breakfast homes and transient vacation units in the resort district, resort mixed use precinct of the Waikiki special district, or the A-1 low-density apartment district or A-2 medium-density apartment district pursuant to subsection (a), and (2) bed and breakfast homes located outside of those zoning districts and precincts; and~~

~~(ii) — Does not preclude the continued operation of bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2; and]~~

~~[(M)](E)~~ The owner or operator shall provide occupants of dwelling units within 250 feet of the dwelling unit used as a bed and breakfast home or transient vacation unit with a phone number that must be answered 24 hours a day, to call in complaints regarding the bed and breakfast home~~[-]~~ or transient vacation unit. The owner or operator shall keep a log of all complaints received during the applicable registration period, and submit the log with each registration renewal application, and at any other time upon the request of the director. The log must include the name, phone number, and address of the complainant, date of the complaint, date the complaint was resolved, and how the complaint was resolved.

~~[(N)](F)~~ Insurance coverage required. The owner or operator must maintain a minimum of \$1,000,000 per occurrence in commercial general liability insurance at all times. In addition to any supplemental insurance coverage selected by the owner or operator, the insurance coverage must include coverage for:

~~(i) Bodily injury and property damage arising out of the condition of the premises or the negligent acts of the business and persons providing services to the business. For the purposes of this paragraph, bodily injury includes mental injuries and emotional distress, regardless of whether the injury is accompanied by other physical or bodily harm;~~



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- (ii) Personal and advertising injury arising out of liability for libel, malicious prosecution, wrongful eviction, wrongful entry, public disclosure of private facts, and invasion of privacy; and
- (iii) Necessary and reasonable medical, surgical, ambulance, hospital, professional nursing, and funeral expenses for a person injured or killed in an accident taking place on the premises.
- (G) Gatherings restricted. The property on which a bed and breakfast home or transient vacation unit is located may not be used for gatherings of ten or more individuals who are not registered as overnight transient occupants at the bed and breakfast home or transient vacation unit.
- (H) Informational binder required. The owner or operator shall create a binder that must be placed and maintained in a conspicuous location within the bed and breakfast home or transient vacation unit at all times. The binder should provide guidance to transient occupants on being respectful of neighbors and responding to emergencies. The binder must be made available for inspection by the department upon request. At a minimum, the binder must include the following documents and information:

 - (i) A floor plan of the dwelling unit used as a bed and breakfast home or transient vacation, identifying the location of all transient occupant bedrooms, the maximum occupancy of each bedroom, and the location of all fire exits;
 - (ii) Parking plan:

 - (aa) For bed and breakfast homes and transient vacation units that are not located in a multifamily dwelling, a parking plan identifying the location and number of parking stalls available to persons associated with the bed and breakfast home or transient vacation unit (such as owners, transient occupants, visitors, or service providers); the parking plan must include illustrations, drawn to scale, showing the size of



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designated parking spaces, their location on the zoning lot, and which spaces may be occupied by vehicles of the transient occupants; or

(bb) For bed and breakfast homes or transient vacation units located in a multifamily dwelling, a parking plan identifying the location and number of parking stalls within the multifamily dwelling that may be used by persons associated with the bed and breakfast home or transient vacation unit; the parking plan may be provided in narrative form without illustrations or graphics;

(iii) Instructions for trash collection and disposal, including the dates and times of scheduled trash collections;

(iv) A copy of the house rules for the bed and breakfast home or transient vacation unit, which must impose quiet hours between 10:00 p.m. and 7:00 a.m. and prohibit the parking of vehicles in areas other than the designated parking spaces identified in the parking plan;

(v) A list of emergency contacts, which must include a 24-hour telephone number for the owner or operator of the bed and breakfast home or transient vacation unit, the 911 emergency telephone number, and the website address for the Hawaii Emergency Management Agency;

(vi) A copy of the certificate of insurance for the bed and breakfast home or transient vacation unit;

(vii) Copies of the general excise and transient accommodations tax licenses for the bed and breakfast home or transient vacation unit; and

(viii) A copy of the registration certificate for the bed and breakfast home or transient vacation unit.

(4) Upon reasonable notice, any bed and breakfast home or transient vacation unit must be made available for inspection by the department.



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- (5) The violation of any provision of this subsection will be grounds for administrative fines and nonrenewal unless corrected before the renewal deadline. Recurring or multiple violations will result in denial of renewal requests.
- ~~[(6) This subsection does not apply to bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.]~~
- ~~[(7)]~~(6) The director may revoke a registration at any time by issuing a notice of revocation under the following circumstances:
- (A) ~~[Recurring violations of the standards and requirements for bed and breakfast homes in Section 21-5.730(b);]~~ The owner or operator receives more than two notices of order within a one year period for violation of subsection (b);
- (B) ~~[Complaints]~~ The owner or operator demonstrates an inability to operate a bed and breakfast home or transient vacation unit without causing significant negative impacts to the surrounding community; including but not limited to instances where complaints from the public indicate that noise or other nuisances created by [guests] transient occupants disturbs residents of the neighborhood in which the bed and breakfast home or transient vacation unit is located; or
- (C) The director determines that good cause exists for revocation of the registration.
- (7) Registration as a bed and breakfast home or transient vacation unit is not transferable, and shall not run with the land.
- (c) Advertisements.
- (1) Definitions. As used in this subsection:
- "Advertisement" means ~~[any form of communication, promotion, or solicitation, including but not limited to electronic media, direct mail, newspapers, magazines, flyers, handbills, television commercials, radio commercials, signage, e-mail, internet websites, text messages, verbal communications, or similar displays, intended or used to induce, encourage, or persuade the public to enter into a contract for the use or~~



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occupancy of a bed and breakfast home or transient vacation unit.] the display or transmission of any communication that may cause a reasonable person to understand that a dwelling unit or portion thereof is available for rent. Advertisements include but are not limited to written and spoken words, emails, text messages, electronic and hard copy publications, flyers, handbills, signs, websites, and expressive images.

"Person" means a ~~[judicial]~~ legal person or a natural person, ~~[and includes businesses, companies,]~~ consisting of individuals and all types of business and legal entities, including but not limited to associations, nonprofit organizations, [firms,] trusts, estates, partnerships, corporations, and limited liability companies[, and individuals].

- (2) Prohibition. Advertisements for all bed and breakfast homes and transient vacation units, or for the lease or rental of other dwelling units where the advertisement may reasonably be read as being an advertisement for the lease or rental of a bed and breakfast home or transient vacation unit, are subject to this subsection.
- (A) It is unlawful for any person to advertise or cause the advertisement of a bed and breakfast home or transient vacation unit without including in the advertisement[:
- (i) ~~A]~~ a current registration certificate number obtained pursuant to this section, or a nonconforming use certificate number obtained pursuant to Section 21-4.110-1 or Section 21-4.110-2[; or], and a tax map key number for the property on which the bed and breakfast home or transient vacation unit is located.
- [(ii) ~~For bed and breakfast homes or transient vacation units located in the resort district, apartment precinct or resort mixed use precinct of the Waikiki special district, or in the A-1 low density apartment district or A-2 medium density apartment district pursuant to subsection (a), the street address, including, if applicable, any apartment unit number, for that bed and breakfast home or transient vacation unit.]~~
- (B) It is unlawful for any person to advertise or cause the advertisement of a dwelling unit that is not a registered bed and breakfast home or transient vacation unit pursuant to this section or operating under a



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nonconforming use certificate pursuant to Section 21-4.110-1 or Section 21-4.110-2, for a term of less than 90 consecutive days. Any advertisement for the rental of a dwelling unit that is not a registered bed and breakfast home or transient vacation unit or operating pursuant to a nonconforming use certificate as aforesaid must include the following statement: "This property may not be rented for less than 90 consecutive days. Rental prices will not be reduced or adjusted based on the number of days the rental is actually used or occupied."

~~[(B)]~~(C) Within seven days after receipt of a notice of violation~~[,] of~~ paragraph (A) or (B), the owner or operator of a [bed and breakfast home or a transient vacation unit] dwelling unit shall remove, or cause the removal of, the advertisement identified in the notice, including[, without limitation,] but not limited to any advertisement made through a hosting platform. If the advertisement is not removed within seven days after receipt of the notice of violation, [a fine of not less than \$1,000 and not more than \$10,000 per day will be levied against the owner or operator associated with the bed and breakfast home or transient vacation unit,] the following civil fines will be levied against the owner or operator of the dwelling unit: an initial fine not to exceed \$5,000, and a fine not to exceed \$10,000 for each day thereafter that the advertisement is on public display [beyond seven days from the date the notice of violation is received].

~~[(C)]~~(D) The existence of an advertisement that is unlawful under paragraph (A) or (B) will be prima facie evidence that a bed and breakfast home or a transient vacation unit is being operated at the listed address. The burden of proof is on the owner of the subject real property to establish that the property is not being used as a bed and breakfast home or transient vacation unit, or that the advertisement was placed without the property owner's knowledge or consent.

(3) Exemptions. The following are exempt from the provisions of this subsection.

(A) Legally established hotels, whether owned by one person, or owned individually as unit owners but operating as a hotel as defined in Chapter 21, Article 10.



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(B) Legally established time-sharing units, as provided in Section 21-5.640.

~~[(C) Legally established dwelling units that are rented for periods of 30 consecutive days or more at any one time.]~~

Publishing companies and internet service providers will not be held responsible for the content of advertisements that are created by third parties.

(d) Unpermitted bed and breakfast homes or unpermitted transient vacation units.

(1) Definitions. As used in this subsection:

"Unpermitted bed and breakfast home" means a bed and breakfast home that is not:

~~[(A) Located in the resort district, resort mixed use precinct of the Waikiki special district, or A-1 low density apartment district or A-2 medium density apartment district pursuant to subsection (a);~~

~~(B)]~~(A) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-2; or

~~[(C)]~~(B) Validly registered under this section.

"Unpermitted transient vacation unit" means a transient vacation unit that is not:

~~[(A) Located in the resort district, resort mixed use precinct of the Waikiki special district, or A-1 low density apartment district or A-2 medium density apartment district pursuant to subsection (a); or~~

~~(B)]~~(A) Operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1[.]; or

(B) Validly registered under this section.



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- (2) It is unlawful for any owner or operator of an unpermitted bed and breakfast home or unpermitted transient vacation unit, or the owner or operator's agent or representative to:
- (A) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit for fewer than ~~[30]~~ 90 consecutive days;
 - (B) Rent, offer to rent, or enter into a rental agreement to rent an unpermitted bed and breakfast home or unpermitted transient vacation unit, where such rental, offer, or rental agreement limits actual occupancy of the premises to a period of less than the full stated rental period, or conditions the right to occupy the rented premises for the full stated rental period on the payment of additional consideration;
 - (C) Set aside or exclusively reserve an unpermitted bed and breakfast home or unpermitted transient vacation unit for rental or occupancy for a period of ~~[30]~~ 90 consecutive days or more, but limit actual occupancy of the premises to a period of less than the full stated rental period, or condition the right to occupy the rented premises for the full stated rental period on the payment of additional consideration; or
 - (D) Advertise, solicit, offer, or knowingly provide rental of an unpermitted bed and breakfast home or unpermitted transient vacation unit to transient occupants for less than ~~[30]~~ 90 consecutive days.
- (e) Any person may submit a written complaint to the director reporting a violation of the provisions of this section regarding bed and breakfast homes and transient vacation units.
- (1) A complaint reporting a suspected violation of the provisions of this section must:
- (A) Identify the address of the bed and breakfast home or transient vacation unit that is the subject of the suspected violation~~[:]~~, including the apartment or unit number of the dwelling unit if it is located in a multifamily dwelling;



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- (B) State all of the facts that cause the complainant to believe that a violation has occurred;
 - (C) Identify the provisions of this section that the complainant believes are being violated; and
 - (D) Provide the complainant's name and a mailing address where the director may ~~[mail a response]~~ respond to the complaint.
- (2) Within 30 days after receiving a written complaint reporting a violation of the provisions of this section, the director ~~[must]~~ shall provide a written response to the complainant either:
- (A) Declining jurisdiction over the complaint, in which case the complainant may pursue judicial relief pursuant to HRS Section 46-4(b);
 - (B) Entering a finding of no violation, which ~~[will be appealable]~~ may be appealed to the zoning board of appeals pursuant to Charter Section 6-1516; or
 - (C) Advising the complainant that the director has initiated an investigation of the complaint.
- (f) The provisions of this section do not terminate or supersede private restrictive covenants or other restrictions that prohibit the use of real property as a bed and breakfast home or transient vacation unit."

SECTION 9. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended by amending the "bed and breakfast homes" entry to read as follows:



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"

Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
Bed and breakfast homes	[P/e]	P/c	
Transient vacation units		P/c	

"

SECTION 10. Chapter 21, Article 10, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definitions of "bed and breakfast home" and "transient vacation unit," and adding new definitions of "transient accommodation" and "transient occupant" to read as follows:

""Bed and breakfast home" means a use in which overnight accommodations are advertised, solicited, offered, or provided, or a combination of any of the foregoing, to [guests] transient occupants, for compensation, for periods of less than [30] 90 consecutive days, in the same [detached] dwelling [as that] unit occupied by an owner, lessee, operator, or proprietor of the detached dwelling. For purposes of this definition~~], compensation]~~:

- (1) Compensation includes~~],~~ but is not limited to~~],~~ monetary payment, services, or labor of [guests.] transient occupants; and
- (2) Month-to-month holdover tenancies resulting from the expiration of long-term leases of 90 days or more are excluded."

""Transient vacation unit" means a dwelling unit or lodging unit that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, for compensation to transient occupants for less than [30] 90 consecutive days, other than a bed and breakfast home. For purposes of this definition~~], compensation]~~:

- (1) Compensation includes~~],~~ but is not limited to~~],~~ monetary payment, services, or labor of transient occupants~~].; and~~
- (2) Month-to-month holdover tenancies resulting from the expiration of long-term leases of 90 days or more are excluded."



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""Transient accommodation" means living accommodations that are offered or made available to transient occupants for less than 90 consecutive days."

""Transient occupant" means any person who rents a lodging or dwelling unit, or portion thereof, for less than 90 consecutive days, and whose permanent address for legal purposes is not the lodging or dwelling unit being rented."

SECTION 11. Administrative Rules. Within 180 days after the effective date of this ordinance, the Director of Planning and Permitting shall adopt administrative rules in accordance with HRS Chapter 91 for the implementation, administration, and enforcement of this ordinance.

SECTION 12. Ordinance material to be repealed is bracketed and stricken. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

SECTION 13. Severability. If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that may be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **41 (2021), CD1**

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SECTION 14. This ordinance takes effect 180 days after its approval; provided that SECTION 11 of this ordinance takes effect upon its approval.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

October 19, 2021
Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

RICK BLANGIARDI, Mayor
City and County of Honolulu